IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6225 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BABUBHAI D SADAT

Versus

STATE OF GUJARAT

Appearance:
Mr.J.J.Yagnik,for the petitioner.
Mr.P.S.Chapaneri, AGP for the respondents.

CORAM : MR.JUSTICE S.M.SONI
Date of decision: 17/04/96

ORAL JUDGEMENT

The petitioner police constable in Vijaynagar Police Station came to be removed from the service by an order dated l3/l6th October,l982 on the charge being levelled against him being held to be proved. Said order of removal came to be confirmed in appeal by the Additional Director General of Police in appeal by order dated 24th June, l983. The charges levelled against the

petitioner and held to be proved are as under:

The petitioner was allotted duty of night roaming for the night of 21/22nd May l980 The petitioner did not report for duty on that night. The police station officer unarmed head constable Somnath Vajeram,therefore, went to report the absence of the petitioner in the Chamber of the PSI at about 7.30 am on 22nd May l980.When the said Head Constable proceeded to report the matter, the petitioner gave filthy abuses which can be interpreted in civilian language as under:

"What are you going to do? On making the report, are you going to damage me?"

The words of abuses in Gujarati language read as under:

The Head Constable then told that he will enter these words of abuses in the police station diary and was preparing to do so. The petitioner then him immediately entered the room of the PSO of the Police Station and forcibly snatched away the police station diary and went away with the same. One unarmed head constable Dhulajibhai had come there and took away the police station diary from him.

Based on these facts, the petitioner was charged that he behaved with in a manner unbecoming of the police constable and also committed an act of indiscipline by snatching away the police station diary which is an important and legal document. Said charge came to be proved against the petitioner and punishment of removal from service was then inflicted.This order of removal is under challenge in this petition under Art.226 of the Constitution of India.

Mr. Yagnik, learned advocate for the petitioner challenged this order on the grounds namely that the conclusions arrived at by the disciplinary authority and confirmed by the appellate authority is perverse. The order passed is a bias one and thirdly that the penalty imposed is not commensurate with the gravity of misconduct.

The respondents though duly served, have not chosen to file any affidavit in reply However, this petition is opposed by the learned Asstt. G.P.Mr. PS Champaneri by contending that this Court while exercising the powers under Article 226 cannot look into the

questions of fact findings and the conclusions recorded by the appellate authority in a domestic inquiry. Apart from this, he contended that there is nothing on record to show that the findings arrived at by the disciplinary authority are either perverse or biased one. He, therefore, contended that in the facts and circumstances of the case, it cannot be said that the penalty imposed is not commensurate with the charges levelled against the petitioner and the order does not call for any interference in this petition under Article 226 of the Constitution of India,and it cannot be said that the penalty imposed against the petitioner is not commensurate with the charges levelled and proved against the petitioner.

Mr. Yagnik, learned advocate for the petitioner took me through Annex.B,C and D. Annexure B is the order dated 3lst March, l982 passed by the District Superintendent of Police, respondent no.4 herein who has also held that the charges levelled against the petitioner are duly proved. From the order passed by the DSP, it clearly appears that he has hold the charges levelled against the petitioner proved and awarded the punishment of reduction in pay as provided in Clause-I of sub-rule (l) of rule 3 of the Bombay Police (Punishments and Appeals)Rules,l956("BP Rules" for short). In appeal also,the Additional IG Police , after hearing the petitioner, not only on the charges but for enhancement for punishment, accepted the findings and enhanced the punishment. All these charges for an act of indiscipline and insubordination namely remaining absent from duty, when the Head Constable reported said absent to the Police Sub Inspector, abuses were given and when the Head Constable wanted to enter the said abuses in the police diary, he snatched away the police station diary also. Then in appeal the appellate authority confirmed the orders passed by the DSP DIG concluded that on the facts of the case, charges levelled against the petitioner cannot be said to be perverse in nature nor the same can be biased one. Learned Advocate Mr. Yagnik has not seriously pressed into[service the challenge on merits. However, he has seriously contended and challenged the quantum of punishment.

He contended that the punishment against the petitioner is not proportionate to the alleged and proved misconduct He also contended that the authority ought to have borne in mind the environment under which the event took place. He further contended that in the instant case, in view of the facts alleged by the petitioner, it was a conspiracy hatched against the petitioner, he

created the situation out of bias against him because of enmity and the situation had arisen and because of such act on the part of the said head police constable, it can be said that the petitioner was provoked. According to the petitioner, he was on duty between l6.00 to 20.00 hours night in the police station on 2l.5.80 and,thereafter, he was further allotted duty of night roaming from 20 hours of that day. It is further alleged that the said head constable had allotted the duty to the petitioner wrongly and under the circumstances, the petitioner was led to use the abusive language against the said head constable. Defence of the petitioner is not accepted by the Department However, learned advocate for the petitioner contended that the same should be borne in mind while considering the quantum of punishment as it reveals the environment and the surrounding circumstances prevailing then. He, therefore, contended that the punishment imposed is not commensurate with the gravity of proved misconduct against the petitioner.

Mr. Yagnik has relied on the judgment in the case of Ram Kishan v. Union of India, l995(7) JT 43.In the said decision, punishment of dismissal is held harsh and disproportionate to the gravity of charge and the penalty of stoppage of two increments with future effect is imposed. There, in case of Ram Kishan (Supra), charges levelled were as under:-

> While he was in charge of the sub jail (naib court)he facilitated one Puran,s/o. Rama,undertrial prisoner,to drink alcohol before being taken to the Court and (2) he had abused the superior officer and created an ugly scene in their presence.

From this judgment, it is clear that each case has to be considered on its own facts. There, in the case before the Supreme Court, it was not known what was the nature of abusive language used by the appellant. Relying on this judgment, Mr. Yagnik, learned advocate for the petitioner contended that the punishment is not commensurate with the proved misconduct. Mr. Yagnik has then relied on the decision in case of C.V.Kotecha v. Halar Salt and Chemical Works,reported in 26(l)GLR l46.There, the facts are that the an employee was active trade union worker and Vice President of the Jamnagar Mazdoor Sangh. He is alleged to behave rudely and uttered abuses to his superior but the facts of that case are glaring to the effect that when his brother who was a co-employee met with an accident in the factory, was removed to the hospital, none from the management had

attended to the workmen injured in the hospital and this has enraged the workman and the event took place. Therefore, the view taken in the facts of this case, in my opinion, cannot provide any guidelines for the present case. Then, in that case of C.V.Kotecha (supra), the Court relied on the decision in case of Ved Prakash Gupta v. M/s. Delton Cable India (P) Ltd. AIR l984 SC 9l4. There, the facts are to the effect that an employee was alleged to have delivered certain challans of water pump to one M/s. Gurumukh instead of IMI Department. Finding the allegations to be false, the petitioner employee was annoyed and then abuses were given to one who made imputations against the employee for such a negligence. The Supreme Court has, then, held the charge levelled against the appellant as not serious one and it is not known how charge even if proved would result in any much less total loss of confidence in the appellant as the management would have it in the charge. Then, it is further held as under:

> There is nothing on record to show that any previous adverse remarks against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Sing and SK Bagga We are,therefore,of the opinion that that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him.We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practices could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. "

Mr. Yagnik has then relied on the decision in the case of Ramakant Mishra reported in l982 SC pg.l552. In the said decision, the charge against the appellant was of disorderly behaviour or conduct likely to cause breach of peace threatening an employee within the premises and of conduct prejudicial to the good order and discipline and were to the effect:

> "Are other persons your father. I will make you forget your high handedness either here or somewhere else An officer of yesterday's making

discloses power consciousness."

The Supreme Court, in the said decision, held that:

> The alleged misconduct consisting of the use of indiscreet or abusive or threatening language occurred on November l8,l97l, meaning thereby that he had put in l4 years of service. Appellant was secretary of the workmen's union. The respondent management has not shown that there was any blameworthy conduct of the appellant during the period of l4 years' service he rendered prior to the date of misconduct. and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that the language discloses a threatening posture, it is subjective conclusion of the person who hears the language because the voice modulation of each person in the society differs and in discreet, improper abusive language may show lack of culture but rarely the use of such language on one occasion unconnected with any subsequent positive action and and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the court must, interfere. Unfortunately, the labour court has completely misdirected itself by looking at the dates contrary to record and has landed itself in an unsustainable order. Therefore, we are required to interfere."

In my opinion, in light of the facts of the present case, the ratio laid down in the decision of Ved Prakash (Supra) and Rama Kant Mishra(Supra) by Honourable the Supreme Court is not applicable. These decisions are not comparable with the facts of the case on hand.

Thus, it is clear from this judgment referred to by the Learned advocate for the petitioner Mr.. Yagnik that each case has to be considered on its own facts. Here, in the instant case, the conduct of the petitioner is alleged to be unbecoming of a police officer. It should be borne in mind that the petitioner belongs to a disciplined force where the discipline is the prime requirement and consideration. That the act of the petitioner is not simpliciter abusing in filthy language because of provocation given by any other person in the

force. On the contrary, when the head constable was acting in discharge of his duty to report the absence of the petitioner to the superior, he gave filthy abuses referred to above with a view to prevent him from reporting about his absence to the superior and In other words, it can be said that the abuses were given with a view to prevent the said head constable from discharging his duties That the subsequent act of the petitioner after giving filthy abuses of snatching away the police station diary also, in my opinion, amounts to preventing him from discharging his duties or exercising his right to complain for the alleged misconduct or misbehaviour of the petitioner. Snatching away of the police station diary may also amount to criminal offence. Thus, the facts of the case on hand are so eloquent which,in my opinion, are not comparable with any of the decisions referred to and relied upon by the learned counsel for the petitioner.

Mr. Yagnik then relied on the decision in case of Mr. RM Parmar v. GE Board reported in 23(l) GLR 352 and contended that the authority, before imposing punishment ought to have borne in mind the principles laid down in that judgment of RM Parmar. Said principles reads as under

Be it administration of criminal law or the exercise of the disciplinary jurisdiction or departmental proceedings, punishment is not and cannot be the end in itself. Punishment for the sake of punishment cannot be the motto. Whilst deliberating upon the jurisprudential dimension the following factors must be considered:

1. In a disciplinary proceeding for an alleged fault of an employee punishment is imposed not in order to seek retribution or to give vent to feeling of wrath.

2 The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

3. It is not expedient in the interest of administration to visit every employee against whom a fault is established with the penalty of

dismissal and to get rid of them. It would be counter productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely, one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

5. When penalties of different categories can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority per force is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employer, the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask his inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be overlooked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the Court and avail of the costly and time consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to make recourse to costly legal proceedings which result in loss of public time and and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings result in favour of the employee, the employer has often to pay the back wages say for about 5 years without being able to take work from the employee

concerned. On the other hand, the employee concerned would have to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses a feeling of antagonism in the collective mind of the workers and gives rise to a feeling of class conflict It does more harm than good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instance, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation ought not to, but may, yield to it in moment of weakness. It cannot be approved but it can certainly be understood particularly in an age when even the rich commit economic offence to get richer and do so by and large with impunity. (And even tax evasion or possession of black money is not considered to be dishonourable by and large). A penalty of removal from service is, therefore, not called for when a poor worker yield to a momentary temptation and commits an offence which often passes under the honourable name of kleptomania when committed by the rich."

Mr. Yagnik has then relied on the judgment in case of Bhimsinh Sardarsinh v. District Superintendent of Police and Others, reported in 23(2) GLR pg. 4l0 wherein it has been observed as under in para 10 of the judgment as under:

Against the back ground of this judicial dicta, there is not doubt, in my opinion, that the penalty with which the petitioner is visited in the instant case is grossly disproportionate to the misconduct of which he is found guilty. The dismissal of the head constable may or may not

have been justified. I am not called upon to go into that question a[[nd I do not wish to express any opinion on the question. So far as the petitioner is concerned, however, dismissal is not the punishment, which could have been reasonably imposed upon him on the totality of facts and circumstances of the case. The petitioner joined service of Police Department in 1958. On the date on which he was dismissed from service, he had put in 19 years of service. There is nothing on the record to show that he was found to be guilty of misconduct on any past occasion or that his past record of service warranted a strict view being taken of his instant misconduct. In other words, the antecedents are not such as would warrant an extremely harsh view being taken in the matter of imposition of penalty in regard to his present misconduct. The role played by the petitioner in the incident giving rise to the disciplinary proceedings has been discussed earlier and the possibility cannot be ruled out that the petitioner may not have mustered courage to protest when the bribe was demanded in his presence or to refuse to accept the amount of bribe which the Head Constable had passed on to him. As pointed in both the decisions referred to earlier, penalty is not the "end" in itself and its only aim is not to see retribution. Reformation and curative technology have also their place in penalty procedures and every departmental authority exercising disciplinary jurisdiction is required to have an informed mind about the same. The circumstances of the present case do not justify the inference that the petitioner himself is guilty of corruption; in fact, that is not even the charge against him. It cannot, therefore, be concluded that it is unsafe to retain the petitioner in service and that the maximum penalty of dismissal is the only alternative. On an overall view of the relevant circumstances of the case, it appears to me that the penalty of dismissal imposed upon the petitioner is so disproportionate to the misconduct proved that no reasonable person would [have imposed it in the like circumstances. The decision on the question of penalty is not right, just, fair and reasonable and it is vitiated due to arbitrary exercise of the penal powers".

In the back ground of this judicial dicta, and as

held by the Supreme Court in the case of Ram Kishan (supra) that no straight jacket formula could be evolved for deciding such matters. Each case has to be considered on its own facts. There is no dispute that the Court has power to interfere with the quantum of punishment and if the conscious of the Court is satisfied that the punishment imposed by the disciplinary authority is arbitrary, capricious, perverse or unreasonable, that no reasonable man would have in such a facts and circumstances, imposed such penalty on an employee, the court can certainly interfere with the order of punishment. (Gujarat State Road Transport Corporation v. JJ Dhandhal,33(3) GLR Pg. l24l).

The question, therefore, is as to whether the punishment imposed can be said to be arbitrary, capricious, arbitrary, perverse, vindictive or so unreasonable that no reasonable man in the facts and circumstances of the case, would have imposed such penalty on the delinquent. As stated above, the facts are quite eloquent that the petitioner remained absent on the earlier day and was allotted duty of night round On the next day when his superior wanted to report to the superior about his absence, the petitioner abused him to the tune that, what are you going to do on making the report. Are you going to damage me?

Petitioner belongs to disciplined force. Their duty has direct nexus with law and order. The petitioner first remained absent without leave and that too on night round duty. One who has to administration and in particular Police force can only know how difficult it is to manage at the last hour when a person allotted night duty is absent without any intimation; what damage it may cause to the public at large and what inconvenience it may cause to administration to maintain law and order. Because of such a duty, it may be difficult for the administration to provide for alternative at the eleventh hour on absence of the petitioner. Not only that he remained absent, but when his next superior wanted to report to his higher authority in discharge of his duty, the petitioner prevented him by giving filthy abuses and challenged that even if he reports, nothing is going to result. When the superior again wanted to make note of those abuses in the police station diary, he snatched away the police station diary from the said head constable and, therefore, as held by the Supreme Court in the decision of Ramakant Mishra (Supra), it is not a case of giving abuses simplicitor without any previous or subsequent act. The petitioner not only acted highhandedly by giving filthy abuses, but also tried to

take the law in his hands. If a person of the disciplined and uniform force takes law in his hand and disobeys the superiors' orders, and when the complaint thereof is made, give filthy abuses with a challenge that nothing would result therefrom and forcibly prevents his superior from taking legal action by posting such entries in the police station diary, what gravity of insubordination and indiscipline should be assessed ? In these set of facts, it is to be considered whether the authority has exercised the powers arbitrarily, capriciously or not. It can be said that the conduct of the petitioner was calculated one and that too taking law in hand in police station itself. Such conduct undisputedly is not becoming of a police officer. Mr. Yagnik has contended that the authority concerned has not considered the principles of reformation while imposing the punishment. It is a question of punishment to a person who has to enforce law and he has taken law in his hands and I am of the view that such person cannot be pardoned. I do not dispute that punishment should be commensurate with the gravity of offence. There cannot be a capital punishment for a trifling offence/misconduct. Gravity of misconduct and punishment, therefore, is a vexed question. To what extent it may be permitted in particular instance to override the requirements of a strictly deterrant theory is a question of time, place and circumstances. In orderly and law abiding communities, concession may be safely made in the interest of reformation, which in more turbulant societies would be fatal to the public. In a force where discipline is the first commandment, breach thereof after a service of number of years, should call for a serious view. Liberal view may send a wrong message and form procedent. In every act amounting to misconduct, one should look for malice, deliberation, intention and purpose. If these elements are absent, misconduct may be looked upon with liberally. Thus, to strike balance between misconduct and its gravity, what is to be considered is whether other similarly situated employee would take such misconduct lightly in view of quantum of punishment. Because discipline is to be enforced, punishment imposed neither wantonly nor arbitrarily cannot be interfered with. There is no question of reformation but if any act or any attempt to impose punishment with a view to have reformation, it may send wrong message to other members of the police force. Therefore, in my considered opinion, the punishment imposed upon the petitioner by the authority cannot be said to be harsh, capricious, arbitrary, perverse, vindictive, or unreasonable in any manner.

Mr. Yagnik has then contended that the petitioner belongs to Adivasi Community and, therefore,in such community, giving of such abuses is not unknown or uncommon. Therefore, abuses should not be given a serious view. If the petitioner would have known that it would lead to such a serious consequences, then, he would not have uttered so and therefore, he should be given an opportunity to improve. In my opinion, this cannot be a ground for pardon. Even if the person belongs to a community of adivasi, he is required to abide by the rules of discipline of the department in which he is serving. Therefore, this cannot be considered to be an execuse and if such an execuse is accepted, it may be treated as licence to the persons of such community to first behave in such a manner and then come for execuse.

For the aforesaid reasons, this petition fails and is accordingly dismissed. Rule discharged. No order as to costs.
